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In the

Supreme Court of the United States

October Term, 1936.

No. 180.

Holyoke Water Power Company,

Petitioner,

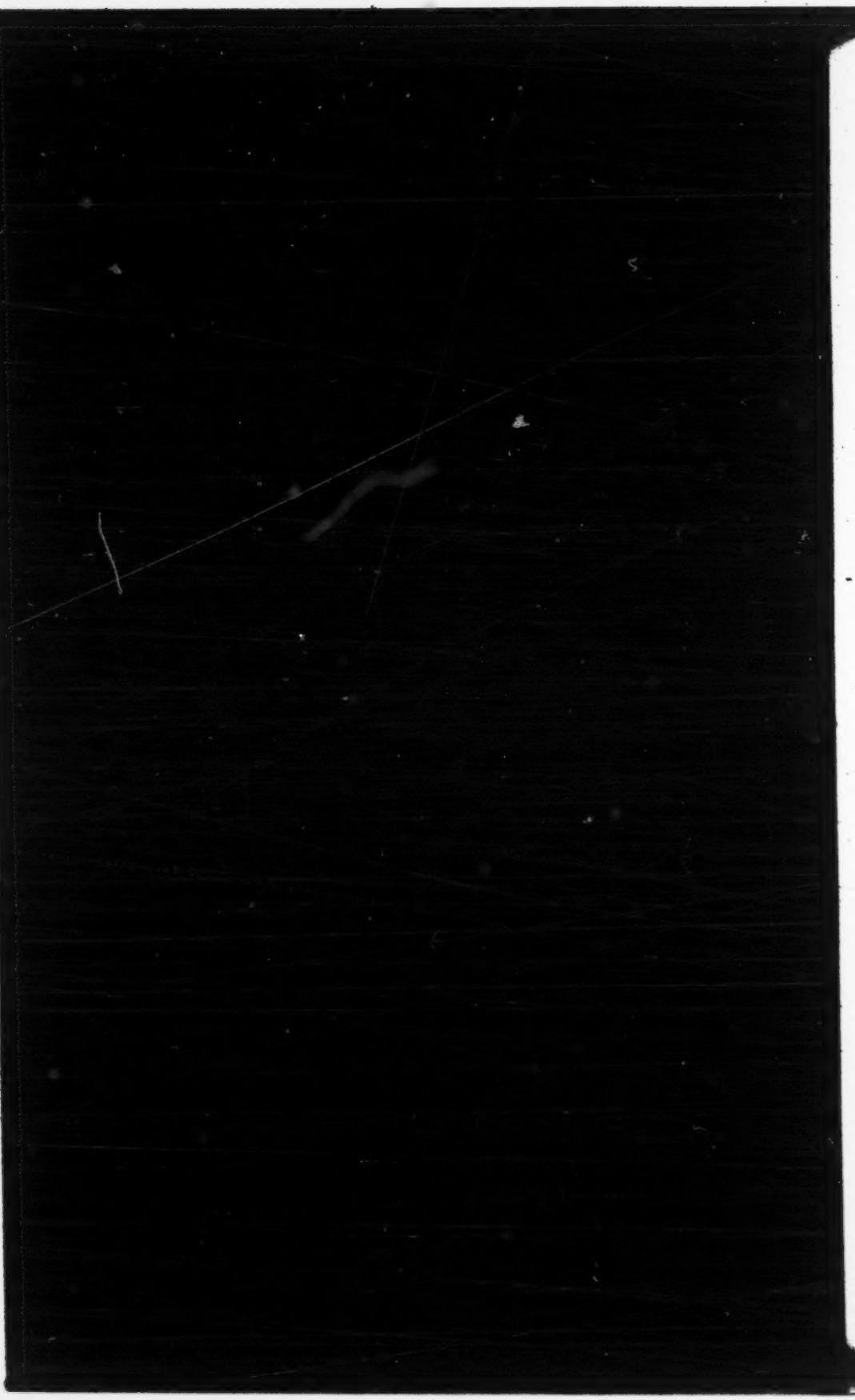
v.

American Writing Paper Company, Inc.,

Respondent.

Brief of Respondent American Writing Paper Company, Inc., in Opposition to Petition for Writ of Certiorari

JOHN L. HALL,
CLAUDE R. BRANCH,
CHARLES P. CURTIS, JR.,
RUSSELL L. DAVENPORT,



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No. 180.

HOLYOKE WATER POWER COMPANY,

PETITIONER,

v.

AMERICAN WRITING PAPER COMPANY, INC.,

RESPONDENT.

Brief of Respondent American Writing Paper Company, Inc., in Opposition to Petition for Writ of Certiorari.

THE ESSENTIAL FACTS.

The issue is the amount of rental payable under certain indentures executed between 1880 and 1898, which read:

> "a quantity of gold which shall be equal in amount to fifteen hundred ($1500) dollars of the gold coin of the United States of the standard of weight and fineness of the year 1894 or the equivalent of this commodity in United States currency."

The petitioner claimed $2539.69, which is at the rate of $35 an ounce.

The respondent contended that the rentals were dischargeable dollar for dollar under the Joint Resolution of June 5, 1933, and paid $1500.

The Reasons why the Petition should be Denied.

A. THE DECISION OF THE CIRCUIT COURT OF APPEALS IS AN INTERPRETATION OF THE MEANING OF THE RENTAL PROVISIONS IN THESE PRIVATE INDENTURES IN QUESTION, AND NOT A CONSTRUCTION OF THE JOINT RESOLUTION OF CONGRESS OF JUNE 5, 1933.

The District Court, by McLellan, J., in the previous case which Brewster, J. referred to and stated that he felt bound by (Record, 71), declined to apply the Joint Resolution to these indentures, saying,

> "The indentures contain no covenant to pay any definite sum of money. The number of dollars mentioned was the means of determining the amount of gold to be delivered or the amount of gold the equivalent whereof was to be paid in currency. The result which the defendant seeks cannot be reached in this way, without doing violence to the intention of the parties as expressed in their contracts" (quoted by Brewster, J., 71; the underlining is ours).

The District Court, nevertheless, found that the "equivalent . . . in United States currency" was the same as if it had applied the Joint Resolution, and so came to the conclusion that the rentals had been satisfied by the respondent's payment of $1500.

The Circuit Court of Appeals came to the same conclusion, but on the ground which the District Court had rejected.

The Circuit Court of Appeals said that, since the discharge of the rentals in gold had been eliminated by reason of the impossibility of delivering gold, the indentures became contracts for the payment of money measured in terms of gold, or, in other words, "gold value clauses"; and that, as such, under the decisions of this Honorable Court in the *Gold Cases*, they fell within the provisions of the Joint Resolution. The Circuit Court of Appeals said,

> "The Supreme Court in *Norman* v. *Baltimore & Ohio R. R. Co.*, 294 U. S. 240, p. 314, referring to the provision in the bonds of the defendant to pay the principal amount and coupons due February 1, 1934, in gold coin of the weight and fineness, in one instance of February 1, 1930, and in two other cases of May 1, 1903, said: that 'if the clauses are treated as "gold value" clauses, that is, as intended to set up a measure or standard of value if gold coin is not available, we think they are still hostile to the policy of the Congress and hence subject to prohibition,' obviously referring to the prohibition contained in the Joint Resolution. Therefore, while the indentures involved here originally were contracts for the payment of gold as a commodity measured in gold dollars, by the Acts of Congress and the proclamations of the President and the Secretary of the Treasury above referred to, they have become contracts for the payment of money measured in terms of gold and so are also hostile to the policy of Congress.
>
> "In other words, the provisions as to rentals in these indentures by reason of the exclusion of gold for monetary use have become gold value clauses within the meaning of the decisions in *Norman* v. *Baltimore & Ohio R.R. Co.*, 294 U. S. 240, and *Nortz* v. *United States*, 294 U. S. 317; and the rentals measured in

terms of dollars, viz.: $1500 of gold coin of the United States of the weight and fineness of the coinage of 1894 became, under the Joint Resolution, dischargeable dollar for dollar in any currency which was legal tender when they became due.

"As Mr. Justice Stone said in his concurring opinion in *Perry* v. *United States*, 294 U. S. at p. 360: 'It is the prohibition, by the Joint Resolution of Congress, of payment of the increased number of depreciated dollars required to make up the full equivalent, which alone bars recovery' " (97-98).

Thus, the District Court construed these indentures one way and ruled that they did not come under the Joint Resolution. The Circuit Court of Appeals construed them a different way and ruled that they did come under the Joint Resolution as gold value contracts, following the recent decisions of this Court. The contention of the respondent was sustained by both courts, though for different reasons. If the Circuit Court of Appeals were wrong in its application of the Joint Resolution, the ruling of the District Court, that the "equivalent" of the gold in currency was $1500, brings the case to the same conclusion. If certiorari be granted, this other reason for reaching the same result should be considered, and the case affirmed.

We respectfully submit that the question is simply one of the construction of a private indenture, which, as construed by the Circuit Court of Appeals, falls clearly within an unambiguous provision of the Joint Resolution, whose meaning, moreover, had been confirmed and established by a ruling of this Court. There is, therefore, no question which calls for review.

B. THE PROPER CONSTRUCTION OF THESE INDENTURES IS NOT SUCH A QUESTION OF LOCAL LAW AS CALLS FOR REVIEW OR CORRECTION.

The rental provisions in question are rare, if not unique. As the Circuit Court of Appeals in its opinion took occasion to say, these indentures are *"unusual contracts"* (100).

C. THE ONLY IMPORTANCE OF THE DECISION ON WHICH THE PETITIONER HERE SEEKS REVIEW IS ITS EFFECT UPON THE PETITIONER'S OWN FINANCES.

In its petition (page 8) it asserts that "the determination of this question involves the continued solvency and existence of the Holyoke Water Power Company."

That is no reason why this petition should be granted.

Moreover, the Circuit Court of Appeals considered this argument, and said,

> "The petitioner can pay its taxes, workmen, for materials and interest on its obligations and all other expenses in the same currency it receives, which is legal tender for all public or private debts. It does not have to pay out currency based on a standard unit of value containing 25.8 grains of gold and receive currency based on a unit of value containing 15 5/21 grains of gold. It receives and pays out currency based on the same standard, viz.: a gold dollar containing 15 5/21 grains of gold, nine tenths fine. Except in so far as the prices of labor and materials may have been increased by the devaluation of the dollar, it suffers no hardship. The prices of labor and materials are always subject to fluctuation without any change in the standard unit of value of the currency.

"Nor is the appellant the only one affected by a change in the standard unit of our currency. Every person whose income is derived from a stated salary, or wage, or is derived from interest on bonds, or dividends on stocks, may be affected in the same way, though not to the same extent" (101).

D. THESE INDENTURES ARE NOT COMMODITY CONTRACTS. THEY OFFER NO OCCASION FOR A DETERMINATION OF THE QUESTION WHETHER THE JOINT RESOLUTION APPLIES TO A SIMPLE COMMODITY CONTRACT FOR THE DELIVERY OF GOLD.

Even as originally drafted and executed, before the delivery of gold became impossible, only speciously were they commodity contracts. For they were always performable, in strict accordance with their terms, by the payment of "the equivalent of this commodity in United States currency." Such a performance was, therefore, expressly contemplated by the parties. In fact, they are not commodity contracts at all, but gold value contracts.

The Circuit Court of Appeals was wholly right when it construed them as gold value contracts and followed the decisions of this Court in the *Gold Cases* (97-98, quoted above in this brief).

The petitioner has quoted (page 8 of the Petition) from what Mr. Justice Bradley said in the *Legal Tender Cases* (12 Wall. 457, at 566).

Mr. Justice Bradley was construing a statute different in its terms and application. However, the petitioner has mutilated his remark by omitting the sentences immediately preceding and immediately succeeding. These sentences make it clear that Mr. Justice Bradley would not have regarded these indentures as "bona fide" contracts for "a specific commodity."

We give the full context of all these sentences, italicizing what the petitioner omitted, as follows:

> "*So long as the money of the country, in whatever terms described, is in contemplation of the parties, it is the object of the legal tender laws to make the credit of the government a lawful substitute therefor.* If the contract is for the delivery of a chattel or a specific commodity or substance, the law does not apply. If it is bona fide for so many carats of diamonds or so many ounces of gold as bullion, the specific contract must be performed. *But if terms which naturally import such a contract are used by way of evasion, and money only is intended, the law reaches the case.*"

Respectfully submitted,

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